

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARCUS VENEGAR, a/k/a MARCUS VAN  
VENEGAR,

Defendant-Appellant.

---

UNPUBLISHED

April 21, 2011

No. 297165

Wayne Circuit Court

LC No. 09-027606-FH

Before: SERVITTO, P.J., and HOEKSTRA and OWENS, JJ.

PER CURIAM.

Defendant appeals as of right following his bench trial conviction of assault with intent to commit great bodily harm less than murder, MCL 750.84. Defendant was sentenced as a fourth habitual offender, MCL 769.12, to 19 months to ten years' imprisonment. We affirm.

Defendant first argues that the evidence was insufficient to support his conviction because there was no evidence from the record that defendant intended to cause the victim great bodily harm. We disagree.

In reviewing the sufficiency of the evidence, the Court must view the evidence de novo in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992); *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002).

The elements of assault with intent to do great bodily harm less than murder are: (1) an attempt or threat with force or violence to do corporal harm to another (an assault) and (2) an intent to do great bodily harm less than murder. MCL 750.84; *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). A defendant's intent to do great bodily harm may be inferred from all of the facts and circumstances surrounding the offense, including: the defendant's acts, the means employed to perpetrate the assault, and the manner of the assault. *People v Lugo*, 214 Mich App 699, 709-710; 542 NW2d 921 (1995); *People v Leach*, 114 Mich App 732, 735; 319 NW2d 652 (1982). Only minimal circumstantial evidence is sufficient to establish a defendant's intent. *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008).

Contrary to defendant's argument, there was sufficient evidence from which the court could infer defendant's intent to do great bodily harm. The victim testified that defendant came rushing through the hotel room door and attacked him, hitting the victim "with some object upside the head repeatedly." The victim was hit in the face and both eyes. The attack lasted "about a good two minutes" and only ended when some other workers in the building pulled defendant off the victim. The victim was taken to the hospital where he remained for three days. He suffered a broken jaw, a broken tooth, and numerous lacerations to his face. The victim received approximately six stitches and his jaw was wired shut. The victim's injuries were confirmed by a police officer who interviewed the victim at the hospital. Even without the specific mention of brass knuckles, the victim clearly testified that defendant hit him upside the head with "some object" that he was sure was not simply a ring on defendant's hand. The victim's testimony supports an inference that defendant used a foreign object to strike the victim. The sudden nature of the attack, the use of a foreign object, the length of the attack, and the victim's serious facial injuries support the trial court's conclusion that defendant had the requisite intent to inflict great bodily harm on the victim. There was, therefore, sufficient evidence to support defendant's conviction.

Defendant next argues that he received ineffective assistance of counsel at trial when defense counsel elicited incriminating testimony during his cross-examination of the victim and when defense counsel failed to present medical records in support of defendant's testimony that he was treated for stab wounds to his hand and arm. We disagree.

Generally, to establish ineffective assistance of counsel, a defendant must show: (1) that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms; (2) that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different; and (3) that the resultant proceedings were fundamentally unfair or unreliable. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994); *People v Odom*, 276 Mich App 407, 415; 740 NW2d 557 (2007). Effective assistance of counsel is presumed, and a defendant bears a heavy burden of proving otherwise. *People v LeBlanc*, 465 Mich 575, 578; 640 NW2d 246 (2002). He must overcome a strong presumption that counsel's performance constituted sound trial strategy. *Odom*, 276 Mich App at 415. The reviewing court will not substitute its judgment for that of counsel in matters of trial strategy, nor will it assess counsel's competence with the benefit of hindsight. *People v Garza*, 246 Mich App 251, 255; 631 NW2d 764 (2001).

Defendant complains that counsel elicited incriminating testimony from the complaining witness. Defense counsel questioned the victim as follows:

Q. Did you see anything in his hands, at that time?

A. I felt something in his hand.

Q. Did you see anything in his hands?

A. I glimpsed something. I'm blocking. I can see something in his hand. That's how I incurred all the lacerations.

Q. Could it have possibly been a ring on one of his fingers?

A. I think it was some brass knuckles, sir.

Q. Did you see any?

A. Yes.

Q. You saw some brass knuckles?

A. Somebody told me.

Q. Sir?

A. Something glittered.

Q. Sir, stop. I'm not asking you to tell me what someone told you. I'm asking you what did you see, sir.

A. I seen something that was glittering, and I felt something that was hard, like metal, so you know, hit me upside my head.

Q. You have a prior history of observing brass knuckles before, sir?

A. Yes.

Q. You have seen brass knuckles before?

A. Yes.

Q. Have you ever been hit by brass knuckles before?

A. Yes, I have.

While it is true that the victim never referenced brass knuckles during his direct examination, he did specifically testify on direct examination that defendant "hit me with some object upside the head repeatedly." Thus, the allegation that defendant was armed with a foreign object was already on the record. Defense counsel acted reasonably in suggesting that perhaps the victim was mistaken and defendant had merely been wearing a ring on one of his fingers. In response, the victim said, "I think it was brass knuckles." Defense counsel did not, as defendant suggests, use the term "brass knuckles" before the victim did; rather, the victim used the term in response to a reasonable question posed by defense counsel. Even if defense counsel's performance fell below an objective standard of reasonableness under prevailing professional norms by opening the door to more incriminating testimony, defendant fails to demonstrate how the result of the trial would have been different. Although the trial court referenced defendant's use of brass knuckles to infer defendant's intent to cause the victim great bodily harm, evidence that defendant had used a foreign object to inflict the beating was already on the record.

Defendant also contends that counsel was deficient for failing to secure his medical records to support defendant's testimony that he suffered wounds to his arm and hand. Defendant testified that the victim stabbed him "with a sharp object, maybe a knife, or pipe, or

something. *I was stabbed in my arm.*” During cross-examination, the prosecutor elicited the fact that defendant had been treated only for a wound to his hand at the hospital, not a wound to his arm. The police officer confirmed that defendant was at the hospital seeking treatment for his hand. Defendant fails to make an offer of proof to establish that the medical records existed and that they supported his contention that he suffered wounds to his arm as well as his hand. Additionally, even if defendant had presented such medical evidence to the trial court, it is doubtful that the outcome would have been any different, given that defendant denied striking the victim at all. Defendant testified that he reached into the room to grab his girlfriend and that the victim stabbed him. In response, “I pushed him off. I pushed him on the bed. I grabbed her, and left out the room.” Thus, defendant was not claiming self-defense and medical records would have had no bearing on the outcome of trial where defendant denied being responsible for the victim’s extensive injuries.

Affirmed.

/s/ Deborah A. Servitto

/s/ Joel P. Hoekstra

/s/ Donald S. Owens